IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Meera Devi & Anr. Vs. State of Rajasthan & Anr.

S.B.CR.MISC. PETITION NO.1345/2006

DATE OF ORDER :: November 22, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr. R.S.Choudhary, for the petitioners.
Mr. Ashok Upadhayay, P.P.
Mr. Kulwant Singh, for complainant-non-petitioner No.2.

BY THE COURT:

This criminal misc. petition under section 482 Cr.P.C. is directed against the order dt. 6.10.2006 passed by the Sessions Judge, Hanumangarh (for short 'the revisional court' hereinafter), whereby the revision petition filed by the petitioners against the order dt. 30.4.2003 passed by the Judicial Magistrate, Tibbi, Distt. Hanumangarh (for short 'the trial court' hereinafter), was dismissed.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the revisional court as well as

by the trial court.

The first information report being FIR No.157 dt.14.5.2000 was registered on the basis of "Parcha Bayan" of non-petitioner No.2. Jai Narayan, who has been subsequently examined by the trial court as PW.4 for the offences under sections 147, 148, 149, 448 and 323 I.P.C. Both the petitioners have specifically been named in the FIR as assailants. Having lathis in their hands, the petitioners inflicted injuries on the leg of Jai Narayan, who has been examined by the Medical Jurist. He alleged to have suffered four injuries; three injuries by the blunt and one by a sharp edged weapon, which has been assigned to the co-accused. After investigation, the police has filed the challan against Bhagwana Ram, Prabhu Ram and Khoob Ram, however, the names of the present petitioners were not included in the list of accused.

The trial court recorded the statements of the prosecution witnesses viz. PW.1 Ramchandra, PW.2 Hari Bhagat, PW.3 Dr. Rajendra Kumar Gupta and PW.4 Jai Narayan, the first informant and complainant-non-petitioner No.2. After recording the statements of these witnesses by the trial court, the non-petitioner No.2 filed an application under section 319 Cr.P.C. before the trial court stating therein that during pendency of the

trial, it has come in evidence that the present petitioners, who are not being the accused, have also committed the offence for which they should be tried together with the accused facing trial and requested the trial court to arraign them as accused. The trial court by order dt. 30.4.2003, allowed the application and arraigned the present two petitioners as accused and took the cognizance against them as well. That order came to be challenged by the accused before the revisional court. The revisional court by an elaborate order, dismissed the revision petition finding no error in the order of the trial court. Hence, this petition.

It is contended by the learned counsel for the petitioners that the injured persons have suffered simple injuries and had they been assaulted by the five persons, there would have been much more injuries than what the injured have suffered as per the injury report. It is further contended by the learned counsel for the petitioner that the trial court as well as the revisional court fell in error in concluding that on the basis of evidence produced by the prosecution, there are chances of conviction of the present petitioners also and, therefore, the trial court fell in error in arraigning the petitioners as accused as also the revisional court not in interfering in the order of the trial court.

Learned counsel for the petitioners has relied on a decision of the Hon'ble Supreme Court in Palanisamy Gounder and Anr. vs. State represented by Inspector of Police, 2006(1) WLC (SC) Cri.352 and two decisions of this Court in Tulcha Ram alias Tulsiram vs. Bhojaram & Ors., 2005(2) Cr.L.R.(Raj.) 1384 and Jagdish vs. State of Rajasthan & Ors. 2006(6) RDD 3516 (Raj.)

In Palanisamy Gounder and Anr. vs. State represented by Inspector of Police (supra), the Apex Court held that the power under section 319 Cr.P.C. cannot be exercised so as to conduct a fishing inquiry noticing the observations of the trial Judge that though the case against the appellants was not on solid foundation but it was felt that to find out the real truth they deserved to be added as accused.

In Tulcha Ram alias Tulsiram vs. Bhojaram & Ors. (supra), this Court has held that the prosecution did not think it proper to implicate some other persons keeping in view the material contradictions in the statement of the petitioner before the Court and his previous statement and "Parcha Bayan" as also contradictions in the statement of other witnesses. It was open for the petitioner to have moved the application soon after his statement was recorded yet the petitioner waited for a period of almost 2 years and moved such application when the trial of the

accused, who were challaned by the police, was leading to the end. Even from the evidence on the basis of which the persons sought to be impleaded as accused, there is hardly any hope or reasonable prospect of conviction of the persons sought to be newly added and arraigned as accused.

In Jagdish vs. State of Rajasthan & Ors. (supra), it was held that the revisional jurisdiction is not to be lightly exercised when it is invoked by a private complainant relying on a decision of the Hon'ble Supreme Court in Harihar Chakraverty vs. State of West Bengal, AIR 1954 SC 266. In that case, the trial court as well as the revisional court dismissed the application filed by the complainant therein under section 319 Cr.P.C. Finding that both the courts below concurrently did not find the case, this Court declined to interfere in the revisional jurisdiction.

Keeping in view the decisions referred hereinabove, when the case in hand is examined right from the lodging of the first information report, "Parcha Bayan" of the injured as also the statements recorded under section 161 Cr.P.C., the case of complainant is consistent that apart from three persons, who have been challaned by the police, the present two petitioners also participated in the occurrence and caused injuries to injured Jai Narayan, non-petitioner No.2. Two injuries alleged to have

been caused by the present petitioners, which corroborates from the medical evidence as also the evidence of the Doctor, who examined the injured and, therefore, the trial court on the basis of material available before it, came to the conclusion that there is a ground to proceed against the petitioners and arraigned them as accused. On revision, the revisional court on consideration of the material available on record, did not find any error in the conclusion arrived at and discretion exercised by the trial court. I have gone through the statements of these witnesses. In my view the case of the prosecution is right from the "Parcha Bayan" and lodging of the first information report consistent that apart from the three persons, who have been challaned, the present two petitioners having lathis in their hands, also caused injuries to the injured more particularly Jai Narayan, non-petitioner No.2. In the circumstances, therefore, the decisions relied on by the learned counsel for the petitioners are of no help and turn on their own facts. It cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of any court warranting interference in the inherent jurisdiction. It is settled law that the inherent powers under section 482 Cr.P.C. are to be exercised sparingly, cautiously, in exceptional and in rarest of rare cases. The case in hand does not fall in the said category.

In the circumstances, therefore, the petition has no force and the same is hereby dismissed.

[H.R.PANWAR],J.

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